

H.512

An act relating to the procedure for conducting recounts

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 17 V.S.A. chapter 51, subchapter 9 is amended to read:

Subchapter 9. Recounts and Contest of Elections

§ 2601. ~~RECOUNTS~~ RECOUNT THRESHOLD

(a)(1) In an election for statewide office, county office, or State Senator, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is ~~less than~~ two percent or less of the total votes cast for all the candidates for an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted.

~~(b)(2)~~ In an election for ~~all other offices~~ State Representative, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is ~~less than~~ five percent or less of the total votes cast for all the candidates for an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted.

(b) In the case of a recount for a local election, the threshold and procedures for conducting the recount shall be as provided in chapter 55, subchapter 3 of this title.

§ 2602. PETITIONS FOR RECOUNTS; SETTING DATE OF RECOUNT

(a) ~~In the case of recounts for local elections and recounts for the office of justice of the peace, the procedures for conducting the recount shall be as provided in subchapter 3 of chapter 55 of this title. [Repealed.]~~

(b) In the case of recounts ~~other than specified~~ described in subsection 2601(a) of this ~~section~~ subchapter, the following procedure shall apply.

(1) A petition for a recount shall be filed within seven calendar days after the election.

(2) The petition shall be filed with:

(A) the Civil Division of the Superior Court, Washington County, in the case of candidates for State or congressional office, or for a presidential election; ~~the petition shall be filed with or~~

(B) the Superior Court in any county in which votes were cast for the office to be recounted, in the case of any other office.

(3) The petition shall be supported, if possible, by a certified copy of the certificate of election prepared by the canvassing committee, verifying the total number of votes cast and the number of votes cast for each candidate.

(c)(1) The Superior Court shall:

(A) set the date of the recount to be:

(i) five business days after the Court receives the petition for, in the case of a primary recount; or

(ii) 10 business days after the Court receives the petition, in the case of a general election recount; and shall

(B) notify all candidates of ~~that~~ the recount date no later than the next business day after the petition is received.

(2)(A) The Superior Court shall forward a copy of the petition to the county clerk.

(B) The Court shall order the town clerk or clerks having custody of the ballots to be recounted or their designees to transport them to the county clerks of their respective counties before the day set for the recount.

(C) ~~County clerks~~ The county clerk shall store all ballots, still in their sealed containers, in ~~their vaults~~ his or her vault until the day of the recount.

(d)-(h) [Repealed.]

(i) ~~The Secretary of State shall bear the costs of recounts covered under this chapter.~~ [Repealed.]

§ 2602a. APPOINTMENT OF RECOUNT COMMITTEE; ~~SETTING DATE~~  
~~OF RECOUNT~~

(a)(1) Upon receipt of a petition, the county clerk shall notify ~~the chairs of the relevant county political committees that a petition has been filed requesting a recount and advising them to submit immediately a list of nominees for individuals to serve on a recount committee.~~

~~(2) In the case of a recount in a primary election, the county clerk shall~~  
~~notify~~ all candidates for the office ~~which~~ that is the subject of the recount,  
advising them to each submit immediately a list of a minimum of 10 nominees  
for individuals to serve on a recount committee.

~~(3) If a candidate for an office which is the subject of a recount is from a~~  
~~party which does not have a county committee, the county clerk shall send a~~  
~~copy of the notice to the State committee of the party advising them to submit~~  
~~immediately a list of nominees for individuals to serve on a recount committee.~~

~~(4) If a candidate for an office which is the subject of a recount is~~  
~~independent, the county clerk shall send that candidate a copy of the notice and~~  
~~request him or her to submit immediately a similar list of nominees for~~  
~~individuals to serve on a recount committee.~~

~~(5)~~(2)(A) If a list of nominees is not delivered to the county clerk within  
two business days, the clerk shall notify the appropriate candidates that they  
have 24 hours to submit lists of nominees for individuals to serve on the  
recount committee.

(B) If the petitioning candidate fails to submit a complete list of  
nominees by this deadline, the recount shall not move forward.

(C) If any other candidate fails to submit a complete list of nominees,  
the county clerk shall request additional nominees from the other candidates.

(b)(1) The Superior Court shall make a minimum of 12 appointments to the recount committee from among those nominated under this section, with the number of appointments based on the number of votes to be recounted and a goal of completing the recount within one day.

(2) In making these appointments, the court shall appoint an equal number of persons ~~from each party and from those persons~~ representing an ~~independent~~ each candidate, to the extent practicable.

§ 2602b. ASSIGNMENT OF DUTIES; RECOUNT MATERIALS

(a)(1) The county clerk shall supervise the recount and ~~may appoint a sufficient number of impartial assistants to perform appropriate tasks which have not been assigned to recount committee members.~~ The county clerk shall recruit town clerks or their designees to serve as impartial assistants to the county clerk for operating the vote tabulators, and shall consult with the Secretary of State to identify any vote tabulators to be used.

(2) The county clerk ~~shall store all ballots, still in their sealed containers, in his or her vault until the day of the recount~~ may appoint a sufficient number of additional impartial assistants to perform tasks that have not been assigned to recount committee members.

(3) On each day of the recount, the town clerk of any town subject to the recount shall be available to the county clerk in person or by telephone to

answer any questions the county clerk may have regarding that town's election.

(b)(1) The county clerk shall assign committee members to the following teams ~~of at least four persons, consisting of one caller and one observer, representing different candidates, and one tally person and one double-check person, representing different candidates;~~

(A) Counting teams comprising at least four persons each, consisting of an equal number of persons from each of the lists of nominees;

(B) One vote tabulator team, comprising two persons, each of whom is from a different list of nominees; and

(C) One clerk observer team, comprising two persons, one of whom is from the list of the petitioning candidate and one of whom, if possible, is from the list of the winning candidate who received the lowest number of votes.

(2) Any additional team members shall ~~be additional observers and double-check persons, who shall be assigned to ensure that each candidate has one person assigned as either a caller or an observer and one person assigned as either a tally person or a double-check person. One team shall be designated as the clerk observer team, which shall perform only the functions established under this subchapter for that team~~ remain unassigned and shall be used as necessary on the day of the recount.

(c) ~~The recount committee shall use~~ Secretary of State shall provide to the recount committee:

(1) fresh seals, manila tags, tally sheets, ~~double check sheets,~~ summary sheets for each ~~polling place town,~~ master lists for the entire election to be recounted, and other ~~appropriate material provided~~ deemed appropriate by the Secretary of State; and

(2) the official return of votes for each town subject to the recount.

§ 2602c. PREPARATION FOR RECOUNT; GENERAL RULES

(a) Recount area; preserving order.

(1)(A) The county clerk shall designate an area within which the recount shall take place.

(B) Persons who are not committee members or who have not been designated as impartial assistants by the county clerk shall be permitted to view the recount in progress, but shall not be permitted within the recount area.

(2) The county clerk shall preserve order. If a person, after notice, is persistently disorderly and refuses to withdraw from the premises, the county clerk may cause the person to be removed from the premises.

(b) Preliminary requirements. Before the recount begins, ~~the~~ and any containers are opened:

(1) Explaining procedures. The county clerk shall explain the recount procedures ~~which~~ that are to be followed and shall answer questions relating to

such procedures. ~~The county clerk shall use volunteer town clerks to operate and instruct on the use of vote tabulators.~~

(2) Blank ballots; vote tabulator test.

(A) The county clerk shall obtain blank ballots from the town clerks of the towns subject to the recount. These blank ballots shall be used as test ballots to perform the vote tabulator test described in this subdivision (2).

(B)(i) The vote tabulator team shall perform a test of the vote tabulators that will be used by marking and feeding into each tabulator a minimum of 10 test ballots. The test ballots shall be marked with various votes for each candidate for the office subject to the recount.

(ii) If more than one memory card is to be used, such a test shall be performed for each memory card.

(C) If a vote tabulator does not tabulate these votes accurately, it shall not be used.

(D) Once the test is completed, these ballots and the tabulator tape containing the results of the test shall be sealed in an envelope that shall be dated and marked "TEST BALLOTS—DO NOT COUNT." This envelope shall then be kept separate from the rest of the containers.

~~(b)~~(c) Tables. Each team shall have a separate table and the county clerk shall have a separate table, and all of these tables shall be spaced apart.

(d) Separating containers, polling places, and towns. Each recount team shall:

(1) recount the contents of one container before opening another container at its table, ~~shall~~;

(2) recount the contents of all the containers relating to one polling place before moving to those of another polling place; ~~and shall~~

(3) complete the recount for one town before moving to material relating to another town.

~~(e)~~(e) Recording containers. For each ~~polling place town~~, the number of containers shall be counted and recorded on the ~~master list~~ summary sheet for that town.

~~(d)~~(f) Inspecting containers and seals.

(1) Containers. Before opening, each container shall be inspected, and if no tag is present, replacement manila tags shall be affixed, specifying date of election and name of town and polling place.

(2) Seals.

(A) Likewise, each ~~Each~~ seal shall be ~~examined~~ inspected to see if it is intact, and the county clerk shall attach to any ~~bag~~ container with a defective seal a tag stating that the seal was defective and containing the information ~~which~~ that was contained on the defective seal.

(B) If a seal number does not match the seal number reported by the town clerk on the official return of votes, the county clerk shall contact the town clerk to request an explanation for that difference. The county clerk shall record any explanation on the summary sheet for that town.

~~(e)(g) Uncounted containers.~~ Uncounted containers shall be kept in one part of the room and moved to the other side as they are counted; ~~each team shall have a separate table and the county clerk shall have a separate table, all of which tables shall be spaced apart.~~

~~(f)(h) Checklist container.~~ If there is more than one container from a polling place, the county clerk shall open first the container ~~which~~ that is identified as containing the checklist, if applicable.

~~(i) Opening containers.~~ ~~Upon opening the first container in the presence of the clerk observer team, the~~ The county clerk shall empty the contents of each container onto the clerk's his or her table in the presence of the clerk observer team.

(j) Materials not to be distributed. The county clerk shall ensure that teams are not given, and the teams shall not count:

(1) ballots marked defective or contained in a defective ballot envelope;

(2) unused ballots, ~~early or absentee ballots which arrived after the close of polls,~~ that were not distributed to voters; or

(3) ballots spoiled returned by voters and turned in by voters requesting fresh who requested replacement ballots, or ballots contained in a replaced ballot envelope.

(k) Recording defective ballots. In the presence of the clerk observer team, the county clerk shall mark the number of defective ballots from the official return of votes for each town on the summary sheet for that town.

§ 2602d. REVIEW OF OFFICIAL RETURN OF VOTES; EXAMINATION OF CHECKLISTS CHECKLIST

(a)(1) The county clerk shall review the official return of votes for each town, record on the summary sheet for each town the number of ballots counted and the number of voters checked off the checklist on the town's return, and if those two numbers are the same, the checklist for that town shall not be examined.

(2) If those two numbers for a town are not the same, the checklist shall be examined in accordance with the following provisions of this section.

(b) The checklist from the first bag container shall be assigned to a team. The caller and observer Two persons who represent different candidates, each acting independently, shall examine the checklist and determine how many voters voted at the polling place, repeating the process until they agree on a number or until they agree to disagree on a number.

~~(b)(c)~~ Then the checklist shall be examined by ~~the tally person and the double-check person~~ the remaining members of the team, repeating the process until they agree on a number or they agree to disagree on the number.

~~(e)(d)~~ The results obtained from the two subgroups will be compared and if they do not match, the process shall be repeated until there is agreement among all the members of the team or until team members agree to disagree.

~~(d)(e)~~ The number finally determined by a majority of team members shall be submitted to the county clerk in the presence of the clerk observer team, together with an indication of the nature and extent of ~~the~~ any disagreement.

~~(f)~~ ~~If one or more team members do not agree with the number submitted,~~  
~~the~~ The county clerk shall note on the master list the fact summary sheet for the town the number finally determined, together with a note indicating that the number of people appearing as having voted on a specified the checklist was subject to dispute, if one or more team members did not agree with the number submitted.

§ 2602e. SORTING BALLOTS; BALLOT REVIEW; RECOUNT OF  
REMOVED BALLOTS BY HAND

(a) Sorting ballots.

(1) While the checklist is being examined, if applicable under subsection 2602d of this subchapter, after emptying a container onto his or her table, the county clerk shall separate ballots from the container into a number of batches

equal to the number of counting teams, with each batch being of approximately equal size.

(2) Each counting team shall take a batch of ballots from the county clerk's table and take that batch to the counting team's table.

(3) Two persons who represent different candidates on a counting team shall sort that batch into stacks of 50 ballots, and the remaining members of the team shall recount each stack to ensure that there are 50 ballots in it.

(4)(A) The counting teams shall combine any ballots not placed into a stack of 50, and one of those counting teams shall separate those combined ballots into stacks of 50 and recount them in accordance with subdivision (3) of this subsection.

(B) For any final stack that contains fewer than 50 ballots, the county clerk shall affix to the top of that stack a note indicating how many ballots are contained in it.

(b) Ballot review and removal.

(1)(A) For each stack, a counting team shall review each ballot within the stack and remove from that stack each ballot upon which, for the office in question, the voter recorded his or her vote or votes in that race in any manner other than completely filling in the oval to the right of the candidate's name.

(B) Each counting team shall also remove any plain paper or damaged ballots.

(2) A ballot shall be removed only if at least two members of the counting team agree to its removal.

(3) A ballot without markings for the office in question shall not be removed.

(4) A ballot that is not removed upon this first review shall not be reviewed again.

(c) Delivery of remaining ballots.

(1) Each counting team shall then count the number of ballots that remain in a stack in accordance with the process set forth in subdivision (a)(3) of this section and attach to that stack a note with that number.

(2) Two members representing different candidates on a counting team shall deliver those ballots to the vote tabulator team, while the remaining members of the counting team stay at the table with the removed ballots.

(d) Hand count of removed ballots; questionable votes.

(1) Each counting team shall then separate the removed ballots into stacks of 50 in accordance with the process set forth in subdivision (a)(3) of this section.

(2) The counting team shall then hand count the votes for the office in question on the removed ballots, and mark the results on a tally sheet for each stack of 50 removed ballots and any remaining stack with less than 50.

(3)(A) This hand count shall be in accordance with the rules for counting ballots set forth in section 2587 of this chapter, except that if two persons on the counting team do not agree on how to count a vote, the ballot shall be set aside as containing a questionable vote.

(B)(i) For any questionable vote, a copy of the ballot shall be made, and this copy shall be clearly marked on its face identifying it as a copy. Once the recount of a container is completed, any such copies shall be placed on the top of the other ballots and shall remain together with the other ballots.

(ii) Each original ballot with a questionable vote shall be attached to a note that identifies it by town, county, polling place, and container seal number. The originals of these ballots with questionable votes shall be clipped to the summary sheet for that town, along with a copy of the official return of votes, and submitted to the court for a final decision.

(iii) The county clerk shall record the number of ballots containing questionable votes to be submitted to the court on the summary sheet for the town.

(C) At the end of the hand count for a container, two persons from each counting team who represent different candidates shall deliver any tally sheets from their table to the county clerk in the presence of the clerk observer team.

(D) The county clerk, in the presence of the clerk observer team, shall record the totals from each tally sheet onto the summary sheet for the town.

(e) This process shall be completed for as many containers as there are for each town.

§ 2602f. RECOUNT OF REMAINING BALLOTS BY VOTE TABULATOR

(a) The vote tabulator team shall operate any vote tabulator used in the recount, with the assistance of the recruited town clerks or designees.

(b) The vote tabulator memory card shall be programmed to read only the votes for the election that is the subject of the recount.

(c)(1) ~~Vote tabulator readable~~ At the same time as any removed ballots are being hand counted, the vote tabulator team shall take any ballots from each container ~~shall be fed~~ delivered to them, and feed them through a vote tabulator by one team until all ~~vote tabulator readable~~ ballots from the container have been entered. For ballots unable to be read by a vote tabulator, such as damaged or plain paper ballots, a second team shall collect these ballots from the pile and transfer the voter's choices on those ballots to blank ballots provided by the Secretary of State. After all of the ~~vote tabulator readable~~ ballots have been fed through the vote tabulator, the first team shall feed through the vote tabulator any transfer ballots created by the second team.

(2) ~~The recount teams shall switch roles for each subsequent container of ballots of a polling place that are to be fed through the vote tabulator, if there is more than one container per polling place.~~ The vote tabulator team shall attempt to feed ballots into the vote tabulator in the same direction.

(3)(A) If the tabulator refuses a ballot, the vote tabulator team shall announce that occurrence and whether the ballot was counted, and may override that refusal.

(B) If the tabulator continues to refuse the ballot, the vote tabulator team shall announce that occurrence and return it to a counting team for hand counting.

(4) This process shall be used until all ballots from a ~~polling place container~~ have been tabulated by a vote tabulator or otherwise returned to a counting team for hand counting.

~~(b)(d)(1)~~ This process shall be repeated until all ballots from a town have been fed through a vote tabulator.

(2) If there is more than one container for a town, the tabulator tape shall not be printed until ballots from all containers for that town have been tabulated.

(e)(1) After all ballots from a ~~polling place town~~ have been tabulated by a vote tabulator, ~~a recount team~~ the vote tabulator team shall print the tabulator tape containing the unofficial results ~~and document those results on a tally~~

sheet for that town, and deliver that tabulator tape to the county clerk in the presence of the clerk observer team.

(2) The county clerk shall then record the totals from the tabulator tape onto the summary sheet for the town in the same manner that he or she recorded the individual tally sheet totals from the hand-counted ballots.

~~Another recount team shall then open the tabulator's ballot box and remove all ballots. The ballots shall then be divided among the recount teams to be examined to find write-in names and markings of voter intent that were not vote tabulator-readable as outlined in the Secretary of State's vote tabulator guide and most recent elections procedures manual. A caller, tally person, and double-check person shall be used to examine the ballots removed from the ballot box. If the caller and the observer or observers do not agree on how a ballot should be counted, the entire team shall review the ballot and if all members agree, it shall be counted that way.~~

~~(e) If one person does not agree, that ballot shall be set aside as a questioned ballot and a copy shall be made, which copy shall be clearly marked on its face identifying it as a copy. Any copies shall be placed on the top of the other ballots and shall remain together with the other ballots. Each original ballot deemed questionable shall be attached to a note which identifies it by town, county, polling place, and bag seal number. The originals of these~~

~~questionable ballots shall be clipped to the summary sheet for that polling place and returned to the court for a final decision.~~

~~(d) After the court has rendered a final decision on a given questionable ballot, it shall be returned to the county clerk who shall keep it in a sealed container for a period of two years.~~

~~(e) Write in votes for preprinted candidates shall be counted as votes for that candidate.~~

~~(f) If the tally persons do not agree on the number of votes for a candidate on ballots not able to be read by the vote tabulator, the ballots shall be retallied until they do agree. Then the team shall notify the clerk that it has completed its recount.~~

§ 2602h. COMPLETING THE TALLY

(a) The county clerk shall return all ballots to their container, seal the container, record the seal number on the summary sheet, and write “recounted” and specify the date of the recount on the tag.

(b) After In the presence of the clerk observer team, the county clerk shall add together the hand count and vote tabulator totals for a polling place have been listed each town, as recorded on the tally sheets and vote tabulator tape submitted to him or her, the county clerk shall add them up in the presence of the clerk observer team, and record those totals on the summary sheet for that town, and affix his or her seal to that summary sheet.

(c)(1) The county clerk shall compare the number of ballots recounted for that town with the number of voters who voted at that town as reported on the official return of votes, and with the number of voters who voted at that town according to the checklist examination, as applicable under section 2602d of this subchapter and recorded by the county clerk on the summary sheet in accordance with that section.

(2) If these numbers differ, the county clerk shall note the amount of the difference on the summary sheets for that polling place town.

(d) If there is more than one town subject to the recount:

(1) this process shall be repeated for each town; and

(2) once all towns have been recounted, the county clerk shall add together the totals from each town and record the total for all towns on a master summary sheet and affix his or her seal to that sheet.

~~(b) The county clerk shall return all ballots to the container, seal it, record the seal number on the summary sheet, write "recounted" and specify the date of the recount on the tag, and move it to the other side of the room, making sure that there is never more than one bag open at any one time.~~

~~(c) This procedure shall be repeated for each container, until the results from a polling place have been recounted, and then it shall be repeated until the~~

~~results from all polling places in a town have been recounted, and then until the results from all towns have been recounted.~~

~~(d) The county clerk shall add the totals on each summary sheet, affix the clerk's seal, and~~

(e) The county clerk shall send the summary sheets for all polling places towns together with the any master list summary sheet, the ballots marked defective or contained in a defective ballot envelope, and any questionable original ballots containing questionable votes to the court by certified mail, return receipt requested, or shall certify the results to the judge.

§ 2602i. COSTS

(a) Recount committee members and assistants designated by the county clerk shall be paid by the State at the same per diem and mileage rates and according to the same procedures by which jurors are paid.

(b)(1) These and other necessary expenses, as approved by the court, shall be paid by the State through the Court Administrator's Office.

(2) The Secretary of State shall bear the costs of recounts conducted under this subchapter and shall reimburse the Court Administrator's Office.

§ 2602j. ~~OTHER RULES FOR CONDUCTING THE RECOUNT COURT~~

HEARING AND JUDGMENT

(a) ~~The county clerk shall preserve order. If a person, after notice, is persistently disorderly and refuses to withdraw from the premises, the county clerk may cause the person to be removed from the premises. [Repealed.]~~

(b) ~~The county clerk shall designate an area within which the recount shall take place. Persons who are not committee members shall be permitted to view a recount in progress, but persons not authorized by the county clerk shall not be permitted within the area designated by the county clerk. [Repealed.]~~

(c) Candidates and their attorneys shall be given the opportunity to present evidence to the court relating to the conduct of the recount or the marking of any ballot as defective in accordance with section 2547 of this title, or both.

(d) If the court determines that any violations of recount procedures have occurred and that they may have affected the outcome of the recount, a new recount shall be ordered.

(e) After such hearings or arguments as may be indicated under the circumstances, the Superior Court, within five working days, shall:

(1) issue a judgment, which shall supersede any certificate of election previously issued;

(2) send a certified copy of the judgment to the Secretary of State; and  
shall

(3) return to the county clerk any ballots containing questionable ~~ballots~~ ~~which~~ votes that had been forwarded to the court.

§ 2602k. ~~AFTER THE RECOUNT~~ TIES

(a) If the recount results in a tie, the court shall order a ~~recessed~~ runoff election to be held, within three weeks of the recount, on a date set by the court.

(b) The only candidates who shall appear on the ballot at the ~~recessed~~ runoff election shall be those who tied in the previous election.

(c) The ~~recessed~~ runoff election shall be considered a separate election for the purpose of voter registration under chapter 43 of this title.

(d) If the recount confirms a tie as to any public question, ~~no recessed~~ a runoff election shall not be held, and the question shall be certified not to have passed.

(e) Warnings for a ~~recessed~~ runoff election shall be posted as required by subchapter 5 of this chapter, except that the warnings shall be posted not less than 10 days before the ~~recessed~~ runoff election.

(f) The conduct of a ~~recessed~~ runoff election shall be as provided in this chapter for general elections.

~~(b) After the recount, the county clerk shall seal the ballots and other materials back in the containers and store them in the county clerk's vault until returned to the towns. The county clerk shall return all ballots to the respective~~

~~town clerks after issuance of the court's judgment, together with a copy of the judgment. The respective town clerks or their designees shall transport the ballots to the towns from which they came.~~

~~(e) The court shall send a certified copy of the judgment to the Secretary of State.~~

§ 2602m. STORAGE AND RETURN OF ELECTION MATERIALS

(a)(1) After the recount, the county clerk shall store the sealed containers and any other recount materials in the county clerk's vault until returned to the towns.

(2) The county clerk shall release all containers to the respective town clerks after issuance of the court's judgment, together with a copy of the judgment.

(3) The respective town clerks or their designees shall transport the containers to the towns from which they came.

(b) Upon receiving from the court any ballots containing questionable votes, the county clerk shall keep them in a sealed container for a period of two years.

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Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2017.